

REMARKS

Claims 1 and 3-13 are pending in this application. By this Amendment, claims 1 and 3-11 are amended and claims 12 and 13 are added. Claim 2 is canceled without prejudice to or disclaimer of the subject matter recited therein. No new matter is added by these amendments. Support for the amendments to claims 1 and 3 can be found in Applicants' specification at page 5, lines 17-22, for example. Reconsideration of the application based on the above amendments and following remarks is respectfully requested.

Entry of the amendments is proper under 37 CFR §1.116 because the amendments: (a) place the application in condition for allowance for the reasons discussed herein; (b) do not raise any new issue requiring further search and/or consideration as the amendments amplify issues previously discussed throughout prosecution; and (c) place the application in better form for appeal, should an appeal be necessary. Entry of the amendments is thus respectfully requested because claim 1 incorporates features from claims 2 and 3 and the claims have been amended to correct minor informalities.

The Office Action rejects claims 1-5 and 11 under 35 U.S.C. §103(a) over EP 0-259-116 to Holbrook in view of WO 2000/63668 to Taylor et al. (hereinafter "Taylor") and U.S. Patent No. 5,624,815 to Grant et al. (hereinafter "Grant"). Applicants respectfully traverse the rejection.

Independent claim 1 recites a means of transfer between the first container and the second container is provided, said means of transfer comprising at least a first opening in the first container and at least a second opening in the second container, such that the second container defines a first volume of air between the second opening of the transfer means and the at least one system for detecting said bacteria.

Holbrook discloses a test device 2 that contains a supported nutrient medium (supported medium is defined in Holbrook at page 3, lines 46-55). The test device 2 holds

several tubular carriers 9 (see Holbrook's Fig. 5 and page 8, lines 48-54). The tubular carriers 9 include an open top and bottom and at least two porous partitions 12, 13, which divide the interior of the tubular carriers 9 into compartments 14, 15. The tubular carriers are placed in the test device such that one can selectively culture motile bacteria by a process in which the bacteria move from the supported nutrient medium of the test device 2 to the tubular carriers 9. Therefore, the transfer means of bacteria in Holbrook is accomplished based on the bacteria's motility and not on a volume of air between the second opening of the transfer means and the at least one system for detecting said bacteria, as recited in independent claim 1.

Taylor discloses a thermally controlled analytical technique such that temperature changes are used to deliver a sample to a channel with a sample delivery system such that chemical reactions may occur (see Taylor's abstract and page 2, lines 7-26). Specifically, Taylor's means of transfer relies on channels that are capillaries (see Taylor's page 2, lines 21-22) that are closed at one end 13 (see Taylor's Fig. 1, page 2, line 14, page 5, line 24, page 7, lines 22 and 23 and claim 1). The capillaries contain a set of chemical reagents, which are possibly immobilized on their walls near an open end 8. The heating and cooling of the closed end 13 of the capillary controls the movement of the reagents. Therefore, Taylor is much different from claim 1 in that the means of transfer of claim 1 includes two openings and a defined volume of air between the second opening of the transfer means and the at least one system for detecting said bacteria.

Grant discloses a method for a microbiological culture system such that the transfer of defined volumes of liquid can be drawn through the wells 28 by a reduced pressure caused by a device such as a vacuum pump (see Grant's Fig. 3 and col. 6, lines 23-25). For example, the liquid is drawn from the container through the wells under suction (see Grant's col. 2, lines 38-39) and a manifold or other means provides uniform distribution of the sample passing

from the container into the wells (see Grant's col. 2, line 65 - col. 3, line 2). Therefore, the means of transfer disclosed in Grant occurs using a mechanical pump (i.e., vacuum pump Taylor's col. 6, line 2 or a suction pump Taylor's col. 6, line 38) and not a volume of air between the second opening of the transfer means and the at least one system for detecting said bacteria, as recited in independent claim 1.

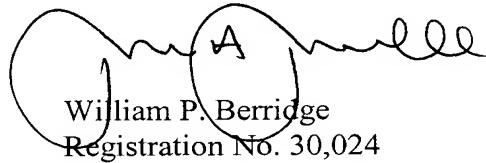
The Office Action, on pages 4 and 5, asserts that it would have been obvious to combine the above-mentioned references to disclose or suggest the previously claimed method for separation of a sample for purposes of analyzing a suspected microbacterial component. However, none of the applied references discloses or suggests a method that includes a means of transfer between the first container and the second container, as recited in amended independent claim 1. Furthermore, such a means would not have been obvious and/or reasonably predictable based upon the teachings of Holbrook, Taylor and Grant. Therefore, Holbrook, Taylor and Grant fail to disclose or suggest the above-mentioned features of independent claim 1.

Accordingly, Applicants respectfully request that the rejection be withdrawn.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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WPB:RHR/mcp

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